

Remarks

Claims 13-49 are pending in the present application. Claims 13-31 and 33-39 are allowed and claims 32 and 40-49 are rejected. By the present amendment, claim 32 is amended and claims 40-49 are canceled.

***Rejections Pursuant to 35 U.S.C. §112, Second Paragraph***

In the Office Action, claim 32 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite. In support, it is asserted that the recitation of "selected from . . . or" is improper Markush terminology. Claim 32 is amended herein and recites "selected from the group consisting of . . . and . . .." No new matter has been added.

In light of the present amendment applicants submit the claims are in compliance with the statute and respectfully request that the rejection be withdrawn.

***Rejections Pursuant to 35 U.S.C. §§102 & 103***

Also in the Office Action, claims 40-49 were rejected under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over applicants' admitted prior art. Claim 40 was rejected under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over either Karvinen or Michalczyk et al. Claim 40 was also rejected under §102(e) as anticipated by or, in the alternative, under §103(a) as obvious over either Horne et al. or Murayama et al. In support, it was asserted that no distinction is seen between the metal oxide particles disclosed by Hoene et al. and Murayama et al., and that recited in claim 13.

Also in the Office Action, claims 41-49 were rejected under §103(a) as being unpatentable over Karvinen or Michalczyk et al., or Horne et al. or Murayama et al. as applied to claim 40 above, and in further view of applicants' admitted prior art. In support, it is asserted that it would be further obvious from applicants' admitted prior art (para. [0002] to [0004] of the specification) to couple a biomolecule to the metal oxide

particles of Karvinen or Michalczyk et al., or Horne et al. or Murayama et al., and to employ the particles as the other recited conventional uses.

Claims 40-49 are cancelled herein, thereby mooted the instant rejections.

Conclusion

Applicants have filed a complete response to the outstanding Office Action and respectfully submit that, in view of the above amendments and remarks, the application is in condition for allowance. The Examiner is encouraged to contact the undersigned to resolve efficiently any formal matters or to discuss any aspects of the application or of this response. Otherwise, early notification of allowable subject matter is respectfully solicited.

Respectfully submitted,

ROCHE DIAGNOSTICS OPERATIONS, INC.

/Brian L. Smiler/

By \_\_\_\_\_  
Brian L. Smiler  
Reg. No. 46,458

9115 Hague Rd.  
Indianapolis, IN 46250-0457  
Telephone No.: (317) 521-3295  
Facsimile No.: (317) 521-2883  
E-mail: brian.smiler@roche.com  
BLS/